

Industry Skills Fund, Long Form Supplementary Terms

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1. Definitions and interpretation

1.1 Defined terms

In this Agreement, except where the contrary intention is expressed, the following definitions are used:

Accounting Standards	the standards of that name maintained by the Australian Accounting Standards Board (created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth)) or other accounting standards which are generally accepted and consistently applied in Australia.
Advisers	(a) the financial or legal advisers of a party; and (b) the respective officers and employees of those financial or legal advisers.
Agreement	this agreement between the Commonwealth and the Recipient, as varied from time to time in accordance with clause 19.4 of these Supplementary Terms, and includes the Funding Document, these Supplementary Terms, the Schedules and any attachments, any other documents incorporated by reference in this Agreement.
Agreement Material	any Material created on or following the Commencement Date, for the purpose of or as a result of the Recipient performing its obligations under this Agreement and includes any modifications that may be required under clause 4.5(b) of these Supplementary Terms.
Agreement Period	the period from the Commencement Date to the End Date.
Asset	any item of tangible property purchased, leased, created or otherwise brought into existence either wholly or in part with use of the Funds, but does not include Agreement Material.
Business Day	a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the Notice is received.
Commencement Date	the date on which this Agreement commences, as specified in item 6 of Schedule 1.
Commonwealth	the Commonwealth as specified in item 1 of Schedule 1 of the Funding Document.
Commonwealth Material	any Material provided to the Recipient by the Commonwealth, including the Material (if any) specified in item 13 of Schedule 1 of the Funding Document.
Commonwealth Proportion	the proportion of Eligible Expenditure on Eligible Activities that the Commonwealth agrees to reimburse in respect of the Recipient or, in the case of a Consortium, in relation to each Consortium Member, specified in clause 2 of Schedule 2 of the Funding Document.
Commonwealth Representative	the person identified in item 3 of Schedule 1 of the Funding Document.

Confidential Agreement Provisions	any provisions of this Agreement identified as confidential in item 18 of Schedule 1 of the Funding Document.
Confidential Information	information that is by its nature confidential and: <ul style="list-style-type: none"> (a) is designated by a party as confidential and is described in item 18 of Schedule 1 of the Funding Document; or (b) a party knows or ought to know is confidential, but does not include: <ul style="list-style-type: none"> (c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.
Consortium	the group of Consortium Members (as modified with the prior written agreement of the Commonwealth from time to time) undertaking the Project, and represented by a Lead Organisation.
Consortium Member	an entity specified in item 5 of Schedule 1 of the Funding Document and any other entity agreed in writing by the Commonwealth, but not including an entity that the Commonwealth has agreed in writing may cease being a Consortium Member.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Department	the Department of Education and Training
End Date	the date on which this Agreement will end (unless terminated earlier), as specified in item 7 of Schedule 1 of the Funding Document or as extended under clause 2 of the Funding Document.
Eligible Activity	an activity that is an Eligible Activity according to clause 8.2(a) of the Funding Document.
Eligible Expenditure	<ul style="list-style-type: none"> (a) any cash expenditure incurred by the Recipient prior to the Commencement Date that the Commonwealth approves in writing as Eligible Expenditure; and (b) all fees, costs and other charges paid in cash by the Recipient that are directly attributable to Eligible Activities and that constitute Eligible Expenditure under the Programme Guidelines. <p>For the avoidance of doubt, in-kind remuneration for, or an in-kind contribution to the cost of, Eligible Activities does not constitute Eligible Expenditure.</p>
Eligible Learner	an eligible learner for the purposes of the Programme Guidelines.
Funding Document	the document called the Multiple Payment Funding Agreement, or Split Payment Funding Agreement, issued by the Commonwealth to the Recipient and executed by the Recipient and to which the Schedules are attached.
Funds	the amounts payable by the Commonwealth under this Agreement up to the maximum specified in clause 1 of Schedule 4 of the Funding Document.

Intellectual Property Rights	<p>all intellectual property rights, including:</p> <ul style="list-style-type: none"> (a) copyright, patents, trademarks (including goodwill in those marks), designs, trade secrets, know how, rights in circuit layouts, domain names and any right to have confidential information kept confidential; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, <p>whether or not such rights are registered or capable of being registered.</p>
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.
Lead Organisation	the entity that has been appointed as agent of the Consortium Members to undertake administrative, financial, legal and reporting obligations on behalf of the Consortium in connection with the Project and this Agreement.
LEADR	the dispute resolution association with that name and the Australian Business Number 69 008 651 232.
Material	includes property, information, software, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.
Milestone	a stage of completion of the Project as set out in clause 3 of Schedule 2 of the Funding Document.
Moral Rights	the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the <i>Copyright Act 1968</i> (Cth).
Notice	a notice, demand, consent, approval or communication issued under this Agreement.
Outcomes	the outcomes for the Project, as set out in clause 1 of Schedule 2 of the Funding Document.
Personnel	in relation to a party, any employee, officer, agent, or professional adviser of that party, and in the case of the Recipient, of any subcontractor.

Pre-existing Material	Material owned by a party before execution of this Agreement, including any Material specified in item 14 of Schedule 1 of the Funding Document.
Programme	the Industry Skills Fund grant programme.
Programme Delegate	the person specified in item 8 of Schedule 1 of the Funding Document.
Programme Guidelines	<p>(a) the Industry Skills Fund, Programme Guidelines;</p> <p>(b) the Industry Skills Fund Customer Information Guide; and</p> <p>(c) any other guidelines relating to the Programme issued by the Commonwealth,</p> <p>as modified or replaced by the Commonwealth from time to time.</p>
Project	the Project set out in clause 2 of Schedule 2 of the Funding Document.
Recipient	the party specified in item 2 of Schedule 1 of the Funding Document.
Recipient Representative	the person identified in item 4 of Schedule 1 of the Funding Document.
Related Body Corporate	has the meaning given in the Corporations Act.
Related Party	<p>in relation to a person is:</p> <p>(a) if the person is a body corporate – a Related Body Corporate, employee, officer, director or shareholder of the person;</p> <p>(b) if the person is an individual – a spouse, de facto partner, child, parent or sibling of the person; and</p> <p>(c) if the person is the Lead Organisation or a Consortium Member:</p> <p>(i) another Consortium Member; and</p> <p>(ii) any Related Body Corporate, employee, officer, director or shareholder of a Consortium Member that is a body corporate, or a spouse, de facto partner, child, parent or sibling of a Consortium Member that is an individual.</p>
Reports	the reports to be provided under clause 10.2 of the Funding Document.
Schedule	a schedule to the Funding Document.
Skills Advice	provision of practical expert independent advice to identify skills gaps based on the circumstances of business and their needs and suggest training solutions.
Specified Personnel	each Consortium Member and the Recipient's subcontractors and Personnel (if any) specified in item 12 of Schedule 1 of the Funding Document.

Supplementary Terms	these Industry Skills Fund, Long Form Supplementary Terms.
Support Service	Eligible Activities that will support the training outcomes of the Project, including mentoring.
Third Party Material	<p>Material owned by a third party that is:</p> <ul style="list-style-type: none"> (a) included, embodied in or attached to the Agreement Material; or (b) used in undertaking the Project.
Training	<p>eligible training in accordance with the Programme Guidelines, including</p> <ul style="list-style-type: none"> (a) nationally recognised training, including full qualifications and skill sets; (b) training that is accredited through State and Territory systems, including language, literacy and numeracy training; (c) high quality, innovative or tailored training that may not yet be part of a training package or accredited course, including any combination of training modules forming new skill sets and training tailored to meet specific business needs; and (d) training required to navigate export barriers or to access foreign markets, <p>but not including the following:</p> <ul style="list-style-type: none"> (e) training undertaken for the purpose of complying with a legislative or regulatory requirement; (f) training that the Department reasonably considers should be provided by a well-managed enterprise in the ordinary course of business; (g) training that is available through a State or Territory Vocational Education and Training system that is eligible for a subsidy; (h) training that is provided by the Recipient or a Related Party of the Recipient; or (i) training or a consultancy or related activity that does not build capability of an Eligible Learner to the satisfaction of the Programme Delegate.
WHS Act	the <i>Work Health and Safety Act 2011</i> (Cth) and any corresponding WHS law as defined in that Act.
WHS Laws	the WHS Act, regulations made under the WHS Act and any Code of Practice approved for the purpose of the WHS Act.

WHS Worker	<p>Personnel of the Recipient who are <i>workers</i> (as defined in the WHS Act):</p> <ul style="list-style-type: none"> (a) engaged, or caused to be engaged by the Commonwealth; or (b) whose activities in carrying out work are influenced or directed by the Commonwealth, <p>while at work (wherever occurring) in the Commonwealth's business or undertaking.</p>
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1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, this Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Canberra, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any obligation, agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (o) headings are for ease of reference only and do not affect interpretation.

1.3 Completion of Schedules

To the extent that the parties have not completed items in a Schedule of the Funding Document, unless otherwise stated in the Schedule, those items will be taken to be 'not applicable' for the purpose of this Agreement.

2. Subcontractors and Personnel

2.1 Subcontracting

- (a) The Recipient must:
- (i) not subcontract the performance of any of its obligations under this Agreement other than to those entities set out in item 11 of Schedule 1 of the Funding Document without the prior written approval of the Commonwealth, which will not be unreasonably withheld;
 - (ii) not, in any event, enter into a subcontract under this Agreement with a subcontractor named by the Director of the Workplace Gender Equality Agency in a report to the responsible Minister as an employer currently not complying with the reporting requirements of the WGE Act; and
 - (iii) ensure that any subcontractor approved under this Agreement is contractually required to comply with obligations consistent with those contained in the following clauses of these Supplementary Terms:
 - (A) Clause 7 (Insurance);
 - (B) Clause 9 (Confidentiality);
 - (C) Clause 11 (Protection of personal information);
 - (D) Clause 12 (Conflict of interest);
 - (E) Clause 13 (Books and records);
 - (F) Clause 14 (Audit and access); and
 - (G) Clause 19.16 (False or misleading information).
- (b) The Recipient is fully responsible for undertaking the Project and for the performance of all of the Recipient's obligations under this Agreement even if the Recipient subcontracts any aspect of the Project.

2.2 Use of Specified Personnel

The Recipient must:

- (a) undertake the Project or any part of the Project to which their particular expertise relates, with the active involvement of, and using the expertise of, the Specified Personnel; and
- (b) ensure that each of the Specified Personnel is aware of and complies with the Recipient's obligations in undertaking the Project.

2.3 If the Specified Personnel are not available

Where one or more of the Specified Personnel is or will become unable or unwilling to be involved in the Project, the Recipient must notify the Commonwealth immediately. The Recipient must:

- (a) if requested by the Commonwealth, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and

- (b) obtain the Commonwealth's written consent prior to appointing any such replacement person. The Commonwealth's consent will not be unreasonably withheld.

2.4 Commonwealth may request replacement of Personnel

The Commonwealth may at any time request the Recipient to remove from work in respect of this Agreement any of the Specified Personnel or any of the Recipient's subcontractors or Personnel. The Recipient must promptly arrange for the removal of such subcontractors or Personnel and their replacement in accordance with the process outlined in clause 2.3 of these Supplementary Terms.

3. Commonwealth Material

The Commonwealth will provide to the Recipient the Commonwealth Material and the Recipient must ensure that the Commonwealth Material is used strictly in accordance with any conditions or restrictions specified in item 13 of Schedule 1 of the Funding Document and any direction by the Commonwealth.

4. Intellectual Property Rights

4.1 Pre-existing Material and Third Party Material

This clause 4 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material or Third Party Material.

4.2 Third Party Material

- (a) The Recipient must obtain all necessary copyright and other Intellectual Property Rights permissions before making any Third Party Material available for the purpose of this Agreement or the Project.
- (b) The Recipient must specify which parts (if any) of the Intellectual Property Rights are Third Party Material and who owns the Intellectual Property Rights in that material.

4.3 Intellectual Property Rights in Agreement Material

- (a) All Intellectual Property Rights in the Agreement Material vest in the Recipient on creation.
- (b) Unless otherwise specified in item 15 of Schedule 1 of the Funding Document, to the extent that:
 - (i) the Commonwealth needs to use any of the:
 - (A) Pre-existing Material or Third Party Material provided by the Recipient; or
 - (B) Agreement Material,in connection with the Project or Programme the Recipient grants to, or must obtain for, the Commonwealth for the period specified in item 15 of Schedule 1 of the Funding Document a world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate that Material at no cost to the Commonwealth; or
 - (ii) the Recipient needs to use any of the Commonwealth Material for the purpose of performing its obligations under this Agreement, the Commonwealth grants to the Recipient, subject to any conditions or restrictions specified in item 13 of Schedule 1 of the Funding Document and any direction by the Commonwealth, a world-wide, royalty-free, non-exclusive, non-transferable licence (including the right to

sublicense) to use, reproduce, adapt, modify and communicate such Commonwealth Material solely for the purpose of undertaking the Project.

- (c) The licence granted to the Commonwealth under clause 4.3(b)(i) of these Supplementary Terms does not include a right to exploit the Pre-existing Material, Third Party Material or Agreement Material for the Commonwealth's commercial purposes.
- (d) The licence granted to the Recipient under clause 4.3(b)(ii) will terminate automatically on the earlier of the End Date or the date on which this Agreement is terminated.

4.4 Warranty

The Recipient warrants that:

- (a) the Pre-existing Material, Third Party Material and Agreement Material (**Warranted Materials**) and the Commonwealth's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 4 of these Supplementary Terms.

4.5 Remedy for breach of warranty

If someone claims, or the Commonwealth reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Recipient must, in addition to the indemnity under clause 6 of these Supplementary Terms and to any other rights that the Commonwealth may have against it, promptly, at the Recipient's expense:

- (a) use its best efforts to secure the rights for the Commonwealth to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

5. Moral Rights

5.1 Obtaining consents

To the extent permitted by applicable Laws and for the benefit of the Commonwealth, the Recipient must:

- (a) give, where the Recipient is an individual, in a form acceptable to the Commonwealth;
- (b) use its best endeavours to ensure that each of the Personnel used by the Recipient in the production or creation of the Agreement Material gives, in a form acceptable to the Commonwealth; and
- (c) use its best endeavours to ensure that any holder of Moral Rights in Third Party Material included in the Agreement Material gives,

genuine consent in writing to the use of the Agreement Material for the Specified Acts, even if such use would otherwise be an infringement of its or their Moral Rights and notify the Commonwealth if this consent is not obtained.

5.2 Specified Acts

- (a) In this clause 5, unless otherwise specified in item 16 of Schedule 1 of the Funding Document, Specified Acts means:

- (i) falsely attributing the authorship of any Agreement Material, or any content in the Agreement Material (including literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
 - (ii) materially altering the style, format, colours, content or layout of the Agreement Material and dealing in any way with the altered Agreement Material;
 - (iii) reproducing, communicating, adapting, publishing or exhibiting any Agreement Material; and
 - (iv) adding any additional content or information to the Agreement Material.
- (b) For the purposes of clause 5.2(a) of these Supplementary Terms, Agreement Material includes any Pre-existing Material and Third Party Material to the extent that it is included in, forms part of or is attached to the Agreement Material.

6. Indemnity

- (a) The Recipient will at all times indemnify, hold harmless and defend the Commonwealth, its officers and employees (referred to in this clause 6 of these Supplementary Terms as "those indemnified") from and against any loss or liability, including:
- (i) loss of, or damage to, property of the Commonwealth;
 - (ii) claims by any person in respect of personal injury or death;
 - (iii) claims by any person in respect of loss of, or damage to, any property; and
 - (iv) costs and expenses including the costs of defending or settling any claim referred to in clause 6(a)(ii) or clause 6(a)(iii) of these Supplementary Terms,
- arising out of or as a consequence of:
- (v) an infringement, or an alleged infringement, of the Intellectual Property Rights of any person, which occurred by reason of an act done by the Commonwealth in relation to any part of the Project;
 - (vi) any actual, likely or threatened breach of the Recipient's, or its Personnel's or subcontractor's, obligations relating to Confidential Information or personal information; or
 - (vii) without limiting the preceding paragraphs, any breach of this Agreement by the Recipient, or negligence on the part of the Recipient, or its Personnel or subcontractors or wrongful or unlawful act or omission on the part of the Recipient, or its Personnel or subcontractors.
- (b) The Recipient's liability to indemnify those indemnified under clause 6(a) of these Supplementary Terms will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the loss.
- (c) The Recipient will at all times indemnify, hold harmless and defend the Commonwealth against any compensation, remuneration or other amount payable to a third party for the use or exploitation of the Agreement Material (or any of it), or exercise of any Intellectual Property Right of a third party embodied in the Agreement Material, by the Commonwealth (or any person authorised by the Commonwealth) in circumstances where that use, exploitation or exercise is permitted under legislation without infringing the third party's Intellectual Property Right, and against all loss, liability, cost and expense arising out of or in connection with a claim for payment of any such compensation, remuneration or other amount.

7. Insurance

7.1 Obligation to maintain insurance

Unless otherwise specified in item 17 of Schedule 1 of the Funding Document, in connection with the Project, the Recipient must have and maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation;
- (b) public liability insurance for \$10,000,000 (ten million dollars) or more per claim; and
- (c) professional indemnity or errors or omissions insurance for \$1,000,000 (one million dollars) or more per claim.

7.2 Certificates of currency

The Recipient must, on request by the Commonwealth, provide current relevant confirmation of the Recipient's insurance documentation from insurers or insurance brokers certifying that they have insurance as required by clause 7.1 of these Supplementary Terms.

8. Publicity

- (a) The Commonwealth reserves the right to publicise and report on the awarding of the Funds, and may do this by, amongst other means, including the name and location of the Recipient, the amount of the Funds and the title and a brief description of the Project on the Commonwealth's website, in media releases, general announcements about the Programme and annual reports in accordance with the law and Commonwealth policy, including the *Commonwealth Grants Rules and Guidelines - July 2014*, as amended or replaced by the Commonwealth from time to time.
- (b) The Recipient must, before it makes a public announcement in connection with the Programme, an application for funding under the Programme, this Agreement or any transaction contemplated by it, obtain the Commonwealth's written agreement to the announcement, except if required by Law or a regulatory body (including a relevant stock exchange).
- (c) If the Recipient is required by Law or a regulatory body to make a public announcement in connection with this Agreement or any transaction contemplated by this Agreement, the Recipient must, to the extent practicable:
 - (i) first consult with and take into account the reasonable requirements of the Commonwealth; and
 - (ii) limit its disclosure to the matters which it is required to disclose by Law or the applicable regulatory body.

9. Branding

The Recipient must comply with the Commonwealth's Business Brand Guide as amended by the Commonwealth from time to time, and any directions from the Commonwealth in relation to branding.

10. Confidentiality

10.1 Prohibition on disclosure

- (a) Subject to clause 10.4 of these Supplementary Terms, the Recipient must not, without the prior written consent of the Commonwealth, disclose any Commonwealth' Confidential Information to a third party.
- (b) Subject to clause 10.4 of these Supplementary Terms, the Commonwealth must not disclose Confidential Information of the Recipient to a third party, without the prior written consent of the Recipient, if:
 - (i) that Confidential Information is commercially sensitive;
 - (ii) the disclosure of that Confidential Information would cause financial harm to the Recipient or another person; and
 - (iii) the Recipient has provided that Confidential Information to the Commonwealth on the understanding that it will remain confidential.

10.2 Conditions of approval

In giving written consent to use or disclose Commonwealth Confidential Information, the Commonwealth may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Commonwealth under this clause 10.2 of these Supplementary Terms.

10.3 Advisers and third parties

The Commonwealth may at any time require the Recipient to arrange for:

- (a) the Advisers of the Recipient;
- (b) the Personnel and other employees and subcontractors of the Recipient involved in the Project; or
- (c) any other third party to whom the Commonwealth's Confidential Information may be disclosed pursuant to clause 10.4(a) or clause 10.4(b) of these Supplementary Terms,

to give a written undertaking relating to the use and non-disclosure of the Commonwealth's Confidential Information in the form approved by the Commonwealth.

10.4 Exceptions to obligations

The obligations on each party under clause 10.1 or 10.10 of these Supplementary Terms will not be taken to have been breached to the extent that Confidential Information of the other party:

- (a) is disclosed by a party to its Advisers or employees solely in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Agreement;
- (c) is disclosed by the Commonwealth to the Programme Advisory Committee;
- (d) is disclosed by the Commonwealth to the responsible Minister or Parliamentary Secretary;
- (e) is disclosed by the Commonwealth to its Advisers or employees for research, assessment, monitoring and analysis of Commonwealth programmes and activities;
- (f) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;

- (g) is shared by the Commonwealth within the Department, or with another Commonwealth agency, where this serves the Commonwealth's legitimate interests;
- (h) is disclosed by the Commonwealth to the Auditor-General, the Commonwealth Ombudsman or the Australian Information Commissioner;
- (i) is disclosed by the Commonwealth to other Commonwealth, State, Territory or local government agencies in programme reports and consultations;
- (j) is required by Law to be disclosed; or
- (k) is in the public domain otherwise than due to a breach of this Agreement.

10.5 Obligation on disclosure

Where a party discloses Confidential Information of the other party to another person:

- (a) pursuant to clauses 10.4(a), (b) or (g) of these Supplementary Terms, the disclosing party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential, including in the case of Commonwealth' Confidential Information, the receiving person giving the Commonwealth a legally binding undertaking to that effect in the form approved by the Commonwealth; or
- (b) pursuant to clauses 10.4(c) and (e) of these Supplementary Terms, the disclosing party must notify the receiving party that the information is Confidential Information of the other party.

10.6 Additional confidential information

- (a) The parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.
- (b) Where the parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both parties have signed this documentation.

10.7 Period of confidentiality

The obligations under this clause 10 of these Supplementary Terms continue, notwithstanding the expiry or termination of this Agreement:

- (a) in relation to an item of information described in item 18 of Schedule 1, for the period set out in that Schedule in respect of that item; and
- (b) in relation to any information which the parties agree in writing after the date of this Agreement is to constitute Confidential Information for the purposes of this Agreement, for the period agreed by the parties in writing in respect of that information.

10.8 No reduction in privacy obligations

Nothing in this Agreement derogates from any obligation which either party may have under the *Privacy Act 1988* (Cth) as amended from time to time, in relation to the protection of 'personal information' as defined in that Act or information that is protected by the *Census and Statistics Act 1905* (Cth), or any other Act, regulation or other legislative instrument requiring secrecy or confidentiality in dealing with information.

10.9 Return of information

At the Commonwealth's request or on the expiry or termination this Agreement, the Recipient must promptly return all of the Commonwealth's physical and written records containing Commonwealth' Confidential Information, and all documentation relating to that Commonwealth' Confidential Information (including copies), to the Commonwealth in a form reasonably requested by the Commonwealth. Alternatively, if requested by the Commonwealth, the Recipient must destroy such items in the manner specified by the Commonwealth and promptly certify to the Commonwealth in writing that it has done so.

10.10 Confidential Agreement Provisions

Notwithstanding any other provision of this Agreement, the Commonwealth may disclose the provisions of this Agreement except the Confidential Agreement Provisions.

11. Protection of personal information

11.1 Definitions

In this clause 11, the terms 'agency', 'Australian Privacy Principle' (APPs), 'APP privacy policy', 'Australian Privacy Principle Code' (APP code) and 'contracted service provider' have the same meaning as they have in section 6 of the Privacy Act, and 'personal information', which also has the meaning it has in section 6 of the Privacy Act, means:

'information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not'.

11.2 Application of this clause

This clause 11 applies only where the Recipient deals with personal information provided to the Recipient by the Commonwealth, for the purpose of, completing the Project under this Agreement.

11.3 Obligations

The Recipient acknowledges that to the extent this clause 11 applies it is a 'contracted service provider' and agrees in respect of the Project under this Agreement to take all necessary measures to ensure that personal information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, disclosure or modification.

- (a) The Recipient must, on request from the Commonwealth, provide to the Commonwealth:
 - (i) a copy of the Recipient's and any subcontractor's APP privacy policy which is compliant with APP 1;
 - (ii) copies of the Recipient's and any subcontractor's security and data protection policies upon request by the Commonwealth; or
 - (iii) details of the Recipient's and any subcontractor's processes and procedures implemented to ensure compliance with the Privacy Act.
- (b) The Recipient agrees in respect of the Project under this Agreement:
 - (i) to use or disclose personal information obtained by the Recipient from the Commonwealth during the course of the Project under this Agreement, only for the purposes of this Agreement;
 - (ii) not to do any act or engage in any practice that would breach an APP contained in schedule 1 of the Privacy Act, which if done or engaged in by an agency, would be a breach of that APP;

- (iii) to carry out and discharge the obligations contained in the APPs as if it were an agency under the Privacy Act;
- (iv) to notify individuals whose personal information the Recipient holds, that complaints about acts or practices of the Recipient may be investigated by the Privacy Commissioner who has power to award compensation against the Recipient in appropriate circumstances;
- (v) not to use or disclose personal information or engage in an act or practice that would breach APP 7 (direct marketing) or a registered APP Code which is applicable to the Recipient, unless the use or disclosure is necessary, directly or indirectly, to discharge an obligation of this Agreement;
- (vi) to follow any reasonable directions given by the Commonwealth to ensure compliance with the Privacy Act;
- (vii) to not transfer or transmit personal information outside of Australia except with the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Commonwealth under this clause 11.3(b)(vi);
- (viii) to disclose in writing to any person who asks, the content of the provisions of this Agreement (if any) that are inconsistent with an APP or a registered APP code which is binding on a party to this Agreement;
- (ix) to immediately notify the Commonwealth if the Recipient becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 11, whether by the Recipient or any subcontractor (including any complaints made about acts or practices of the Recipient in connection with personal information);
- (x) to notify the Commonwealth of any subpoena, warrant, order, demand or request made by a foreign court or other authority for the disclosure of personal information to which the Privacy Act applies and to not disclose such information without the prior written approval of the Commonwealth, which will not be unreasonably withheld. In giving its approval the Commonwealth may impose such conditions as it thinks fit. The Recipient must comply with any term or condition imposed by the Commonwealth under this clause 11.3(b)(x);
- (xi) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, notified to the Recipient by the Commonwealth to the extent that they are not inconsistent with the requirements of this clause 11; and
- (xii) to ensure that any employee of the Recipient who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Recipient set out in this clause 11.

11.4 Subcontracts

The Recipient must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Recipient has under this clause 11, including the requirement in relation to subcontracts.

11.5 Indemnity

The Recipient agrees to indemnify the Commonwealth in respect of any loss or liability suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the

obligations of the Recipient under this clause 11, or a subcontractor under the subcontract provisions referred to in this clause 11.

11.6 Privacy notice

The Recipient must provide a privacy notice, in the form required by the Commonwealth, to each person who receives Training or Support Services under the Project, prior to the provision of the Training or Support Services to that person.

12. Conflict of interest

12.1 Warranty

The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement.

12.2 Notification of a conflict of interest

If, during the Project a conflict of interest arises, or appears likely to arise, the Recipient must:

- (a) notify the Commonwealth immediately in writing;
- (b) make full disclosure of all relevant information relating to the conflict; and
- (c) take such steps as the Commonwealth requires to resolve or otherwise deal with the conflict.

13. Books and records

13.1 Recipient to keep books and records

The Recipient must:

- (a) keep and require its subcontractors to keep adequate books and records, in accordance with Accounting Standards, in sufficient detail to enable:
 - (i) all receipts and payments related to the Project to be identified and reported in accordance with this Agreement; and
 - (ii) the amounts payable by the Commonwealth under this Agreement to be determined; and
- (b) retain and require its subcontractors to retain for a period of seven years after the expiry or termination of this Agreement, all books and records relating to the Project.

13.2 Records of Training and Support Services

Without limiting clause 13.1 of these Supplementary Terms:

- (a) the Recipient must keep records of the following information in relation to Training:
 - (i) the identity of employers involved;
 - (ii) the identity of training providers;
 - (iii) for training providers that are accredited by the National Training System, evidence demonstrating that the accredited provider had provided Training in scope of Eligible Activities at the time of Training;;
 - (iv) the number of learners;
 - (v) the type of qualification/training undertaken, and the identity of the Training provider for each type;

- (vi) the cost of each qualification;
 - (vii) the total cost to the Recipient of the Project; and
 - (viii) the breakdown of the contributions of the Recipient and the Commonwealth to the cost of the Project; and
- (b) the Recipient must keep records of the following information in relation to Support Services:
- (i) activity undertaken;
 - (ii) personnel involved;
 - (iii) hours spent on the activity;
 - (iv) materials used; and
 - (v) the provider of the support services; and
- (c) the Recipient must keep copies of all training records provided to the Recipient by the training provider that relate to the Project.

The records required under clause 13.2(a) must be kept in relation to training provided by persons accredited by the National Training System and, other than those records described in paragraph 13.2(a)(a)(iii), in relation to training provided by unaccredited persons.

13.3 Costs

The Recipient must bear its own costs of complying with this clause 13.

13.4 Survival

This clause 13 applies for the Agreement Period and for a period of seven years from the expiry or termination of this Agreement.

14. Audit and access

14.1 Right to conduct audits

The Commonwealth or a representative may conduct audits relevant to the performance of the Recipient's obligations under this Agreement. Audits may be conducted of:

- (a) the Recipient's operational practices and procedures as they relate to this Agreement;
- (b) the accuracy of the Recipient's invoices and Reports;
- (c) the Recipient's compliance with its confidentiality and privacy obligations under this Agreement;
- (d) Material (including books and records) in the possession of the Recipient relevant to the Project or this Agreement; and
- (e) any other matters determined by the Commonwealth to be relevant to the Project or this Agreement.

14.2 Access by the Commonwealth

- (a) The Commonwealth may, at reasonable times and on giving reasonable notice to the Recipient:
 - (i) access the premises of the Recipient to the extent relevant to the performance of this Agreement;

- (ii) require the provision by the Recipient, its employees, agents or subcontractors of records and information in a data format and storage medium accessible by the Commonwealth by use of the Commonwealth's existing computer hardware and software;
 - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Recipient, its employees, agents or subcontractors; and
 - (iv) require assistance in respect of any inquiry into or concerning the Project or this Agreement. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- (b) The Recipient must provide access to its computer hardware and software to the extent necessary for the Commonwealth to exercise its rights under this clause 14, and provide the Commonwealth with any reasonable assistance requested by the Commonwealth to use that hardware and software.

14.3 Conduct of audit and access

The Commonwealth must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 14.1 of these Supplementary Terms; and
- (b) the exercise of the general rights granted by clause 14.2 of these Supplementary Terms by the Commonwealth,

do not unreasonably delay or disrupt in any material respect the Recipient's performance of its obligations under this Agreement or its business.

14.4 Costs

Unless otherwise agreed in writing, each party must bear its own costs of any reviews and/or audits.

14.5 Auditor-General and Australian Information Commissioner

The rights of the Commonwealth under clause 14.2(a)(i) to 14.2(a)(iii) of these Supplementary Terms apply equally to the Auditor-General or a delegate of the Auditor-General, or the Australian Information Commissioner or a delegate of the Australian Information Commissioner, for the purpose of performing the Auditor-General's or the Australian Information Commissioner's statutory functions or powers.

14.6 Recipient to comply with Auditor-General's requirements

The Recipient must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Australian Information Commissioner's or his or her delegate's requirements, notified under clause 14.2 of these Supplementary Terms, provided such requirements are legally enforceable and within the power of the Auditor-General, the Australian Information Commissioner, or his or her respective delegate.

14.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the Recipient's responsibility to perform its obligations in accordance with this Agreement.

14.8 Subcontractor requirements

The Recipient must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 14.

14.9 No restriction

Nothing in this Agreement reduces limits or restricts in any way any function, power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Australian Information Commissioner. The rights of the Commonwealth under this Agreement are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Australian Information Commissioner or a delegate of the Australian Information Commissioner.

15. Dispute resolution

15.1 No arbitration or court proceedings

If a dispute arises in relation to the conduct of this Agreement (**Dispute**), a party must comply with this clause 15 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief. After a party has sought or obtained any urgent interlocutory relief, that party must follow this clause 15.

15.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

15.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 15.2 of these Supplementary Terms (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts through a meeting of the Recipient's CEO (or the CEO's nominees) and the Programme Delegate (or the Programme Delegate's nominees) to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them so requests.

15.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 15.3 of these Supplementary Terms, the chairperson of LEADR or the chairperson's nominee will appoint a mediator.

15.5 Role of mediator and obligations of parties

The role of the appointed mediator is to assist in negotiating a resolution of the Dispute. The mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing. Unless agreed by the mediator and parties, the mediation must be held within 21 days of the request for mediation in clause 15.3 of these Supplementary Terms. The parties must attend the mediation and act in good faith to genuinely attempt to resolve the Dispute.

15.6 Confidentiality

Any information or documents disclosed by a party under this clause 15:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

15.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 15. The parties to the Dispute must equally pay the costs of any mediator.

15.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other party after it has complied with clauses 15.1 to 15.5 of these Supplementary Terms. Clauses 15.6 and 15.7 of these Supplementary Terms survive termination of the dispute resolution process.

15.9 Breach of this clause

If a party to a Dispute breaches clauses 15.1 to 15.8 of these Supplementary Terms, the other party does not have to comply with those clauses in relation to the Dispute.

16. Termination

16.1 Termination and reduction for convenience

- (a) The Commonwealth may, at any time, by notice, terminate this Agreement or reduce the scope of the Project.
- (b) On receipt of a notice of termination or reduction the Recipient must:
 - (i) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Agreement Material; and
 - (ii) continue to undertake any part of the Project not affected by the notice.
- (c) If this Agreement is terminated under this clause 16.1, the Commonwealth is liable only for:
 - (i) subject to clause 16.4(a)(i) of these Supplementary Terms, payments under clause 6 of the Funding Document in accordance with this Agreement before the effective date of termination; and
 - (ii) subject to clause 16.1(e) and (f) of these Supplementary Terms reasonable costs actually incurred by the Recipient and directly attributable to the termination.
- (d) If the scope of the Project is reduced, the Commonwealth's liability to pay the Funds or to provide Commonwealth Material abates in accordance with the reduction in the Project.
- (e) The Commonwealth is not liable to pay compensation under clause 16.1(c)(ii) of these Supplementary Terms for an amount which would, in addition to any amounts paid or due, or becoming due, to the Recipient under this Agreement, exceed the total Funds payable under this Agreement.
- (f) The Recipient is not entitled to compensation for loss of prospective profits.

16.2 Termination for default

- (a) Without limiting any other rights or remedies the Commonwealth may have against the Recipient arising out of or in connection with this Agreement, the Commonwealth may terminate this Agreement effective immediately by giving notice to the Recipient if:
 - (i) the Recipient breaches a material provision of this Agreement where that breach is not capable of remedy;
 - (ii) the Recipient fails to provide a report in accordance with clause 10.2 of the Funding Document within 30 days after the due date for that report;
 - (iii) the Recipient breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
 - (iv) in the opinion of the Commonwealth, a conflict of interest exists which would prevent the Recipient from performing its obligations under this Agreement;

- (v) the Commonwealth is satisfied that any statement made in the Recipient's application for funding (if any) is incorrect, incomplete, false or misleading in a way which would have affected the original decision to approve the provision of the Funds; or
 - (vi) an event specified in clause 16.2(c) of these Supplementary Terms happens.
- (b) Without limitation, for the purposes of clause 16.2(a)(i) of these Supplementary Terms, each of the following constitutes a breach of a material provision:
- (i) breach of warranty under clause 4.3 (Warranties) of the Funding Document;
 - (ii) breach of clause 8.3 or 8.4 (Funds) of the Funding Document;
 - (iii) a failure to comply with clause 2 (Subcontractors and Personnel) of these Supplementary Terms;
 - (iv) a failure to comply with clause 4 (Intellectual Property Rights) of these Supplementary Terms;
 - (v) a failure to comply with clause 7 (Insurance) of these Supplementary Terms;
 - (vi) a failure to comply with clause 10 (Confidentiality) of these Supplementary Terms;
 - (vii) a failure to comply with clause 11 (Protection of personal information) of these Supplementary Terms; and
 - (viii) a failure to notify the Commonwealth of a conflict of interest under clause 12 (Conflict of interest) of these Supplementary Terms.
- (c) The Recipient must notify the Commonwealth immediately if:
- (i) there is any change in the direct or indirect beneficial ownership or control of the Recipient;
 - (ii) the Recipient disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Recipient ceases to carry on business;
 - (iv) the Recipient ceases to be able to pay its debts as they become due;
 - (v) proceedings are initiated with a view to obtaining an order for the winding up of the Recipient, or any person convenes a meeting for the purpose of considering or passing any resolution for the winding up of the Recipient;
 - (vi) the Recipient applies to come under, the Recipient receives a notice requiring it to show cause why it should not come under, an order has been made for the purpose of placing the Recipient under, or the Recipient otherwise comes under one of the forms of external administration referred to in Chapter 5 of the Corporations Act or Chapter 11 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) or equivalent provisions in State or Territory legislation in relation to incorporated associations;
 - (vii) the Recipient being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors;
 - (viii) where the Recipient is a partnership, any step is taken to dissolve that partnership; or

- (ix) anything analogous to an event referred to in clause 16.2(c)(v), (vi), (vii) or (viii) of these Supplementary Terms occurs in relation to the Recipient or a Consortium Member.

16.3 After termination

On termination of this Agreement the Recipient must deal with Commonwealth Material and the Commonwealth's Confidential Information in accordance with this agreement and otherwise as reasonably directed by the Commonwealth.

16.4 Commonwealth rights

- (a) Without limiting any of the Commonwealth's other rights or remedies, on termination of this Agreement, the Commonwealth:
 - (i) is not obliged to pay to the Recipient any outstanding amount of the Funds; and
 - (ii) is entitled to recover from the Recipient:
 - (A) any loss, liability, cost or expense incurred by the Commonwealth in connection with any breach of this Agreement by the Recipient; and
 - (B) the amount of any Funds which, in the Commonwealth's opinion, have been spent other than in accordance with this Agreement.
- (b) The Commonwealth may give the Recipient a notice requiring the Recipient to repay to the Commonwealth (or deal with as specified by the Commonwealth) an amount which the Commonwealth is entitled to recover under clause 16.4(a)(ii) of these Supplementary Terms.
- (c) If the Commonwealth gives a notice under clause 16.4(b) of these Supplementary Terms, the Recipient must repay the amount specified in the notice in full (or deal with it as specified by the Commonwealth) within **30 days** of the date of the notice.

16.5 Termination does not affect accrued rights

Termination of this Agreement does not affect any accrued rights or remedies of a party.

17. Survival

The following clauses survive the expiry or termination of this Agreement:

- (a) Clause 4.2 (Acknowledgment of support) of the Funding Document;
- (b) Clause 7 (GST) of the Funding Document;
- (c) Clause 9 (Repayment) of the Funding Document;
- (d) Clause 10.2 (Reporting) of the Funding Document;
- (e) Clause 10.3 (Evaluation) of the Funding Document;
- (f) Clause 4 (Intellectual Property Rights) of these Supplementary Terms;
- (g) Clause 5 (Moral Rights) of these Supplementary Terms;
- (h) Clause 6 (Indemnity) of these Supplementary Terms;
- (i) Clause 7 (Insurance) of these Supplementary Terms;
- (j) Clause 10 (Confidentiality) of these Supplementary Terms;
- (k) Clause 11 (Protection of personal information) of these Supplementary Terms;
- (l) Clause 13 (Books and records) of these Supplementary Terms;

- (m) Clause 14 (Audit and access) of these Supplementary Terms for a period of seven years from the expiry or termination of this Agreement;
 - (n) Clause 16.4 (Commonwealth rights) of these Supplementary Terms; and
 - (o) Clause 19.2 (Amounts due to Commonwealth) of these Supplementary Terms,
- together with any provision of this Agreement which expressly or by implication from its nature is intended to survive the expiry or termination of this Agreement.

18. Notices and other communications

18.1 Service of Notices

A Notice must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or other electronic means (facsimile and/or email as specified) to the recipient's address for Notices specified in item 19 of Schedule 1, as varied by any Notice given by the recipient to the sender.

18.2 Effective on receipt

A Notice given in accordance with clause 18.1 of these Supplementary Terms takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;
- (d) if sent by email, as provided under sections 14 and 14A of the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

19. Miscellaneous

19.1 No security

The Recipient must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest, or for the preparation of, or in the course of any litigation:

- (a) the Funds;
- (b) this Agreement or any of the Commonwealth's obligations under this Agreement; or
- (c) any Assets or Intellectual Property Rights in Agreement Material.

19.2 Amounts due to Commonwealth

- (a) Without limiting any other of the Commonwealth's rights or remedies, any amount owned or payable to the Commonwealth (including by way of refund), or which the Commonwealth is entitled to recover from the Recipient under this Agreement, will be

recoverable by the Commonwealth as a debt due and payable to the Commonwealth by the Recipient.

- (b) The Commonwealth may set-off any money due for payment by the Commonwealth to the Recipient under this Agreement against any money due for payment by the Recipient to the Commonwealth under this Agreement.

19.3 Ownership of Agreement

All copyright and other Intellectual Property Rights contained in this Agreement remain the property of the Commonwealth.

19.4 Variation

No agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is agreed in writing both parties and executed in a manner specified by the Commonwealth.

19.5 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

19.6 Assignment and novation

The Recipient may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

19.7 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

19.8 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

19.9 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

19.10 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

19.11 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

19.12 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

19.13 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

19.14 Relationship

- (a) Subject to clause 19.14(c), the parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) Subject to clause 19.14(c), this Agreement does not create a relationship of employment, agency or partnership between the parties.
- (c) The parties acknowledge that if the Recipient is the Lead Organisation of a Consortium, the Recipient:
 - (i) enters into this Agreement in its own right and as agent of each Consortium Member; and
 - (ii) may bind and represent each Consortium Member.

19.15 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

19.16 False or misleading information

- (a) The Recipient acknowledges that giving false or misleading information to the Commonwealth is a serious offence under section 137.1 of the *Criminal Code Act 1995*.
- (b) The Recipient must ensure that any subcontractor engaged in connection with the Agreement acknowledges the information contained in this clause.

Note: Under section 137 of the Criminal Code giving false or misleading information to a Commonwealth entity is an offence, but only if the Commonwealth entity took reasonable steps to inform the person of the offence.